



A REPORT
TO THE
MONTANA
LEGISLATURE

LEGISLATIVE AUDIT
DIVISION

08-14

SENATE TAXATION

EXHIBIT NO.

5

DATE

1.15.09

BILL NO.

SB132

FINANCIAL-COMPLIANCE AUDIT

Department of Revenue

*For the Two Fiscal Years Ended
June 30, 2008*

DECEMBER 2008

the administration of the tax laws, as discussed below. Our office also recommended during the performance audit "Improving Montana's Opencut Mine Permitting Process" (08P-04), that the Department of Environmental Quality coordinate data-sharing needs with the Department of Revenue to help ensure identification of all opencut mining operators required to pay the Resource Indemnity and Groundwater Assessment Tax.

Notification of Nonfilers and Delinquent Filers

The department does not have adequate procedures to notify the Secretary of State of all corporation license tax nonfilers and delinquent filers, as required by section 15-31-523, MCA.

If a corporate license tax is not paid or if a return is not filed 11 months after the date of delinquency, section 15-31-523, MCA, requires the department to transmit the name of the corporation to the Secretary of State so the public can be notified the corporate powers, rights, and privileges of domestic corporations are suspended and the rights of foreign corporations to do intrastate business in this state are forfeited. If any domestic corporation fails for five consecutive years to either file a return or to pay the corporation license tax, this statute requires the department to notify the corporation by mail that the corporation will become dissolved if it fails to file all delinquent reports and pay all delinquent corporation license taxes within 60 days. If the corporation does not file all delinquent reports and pay all delinquent corporation license taxes, the statute requires the department to certify this fact to the Secretary of State, the corporation be dissolved, and the public notified of the corporation's dissolution.

As discussed in the prior audit, the department does not notify the Secretary of State when a corporation does not file or is delinquent in filing, unless department personnel know the corporation is currently operating in Montana and refuses to file a corporation license tax return. Department personnel do not check with the Secretary of State or its website to see whether the corporation is active. Department personnel indicated that the benefit of trying to comply with this statute is minimal, as past history has shown most corporations that do not file returns have already voluntarily dissolved or are no longer active. They also were concerned about the potential risk of suspending a corporation that had filed and the related cost of time to correct such an error. Department personnel estimated the cost to the department of complying with this law is about \$13,000 and the cost to the Secretary of State is about \$24,000 for computer system enhancements.

RECOMMENDATION #6

We recommend the department report corporation license tax nonfilers and delinquent filers to the Secretary of State as required by state law.

Board of Review Meetings

The Board of Review does not meet quarterly, as required by section 30-16-302(3), MCA.

The legislature established a Board of Review in section 30-16-302, MCA, to provide policy direction to the Department of Revenue in designing and recommending to the legislature implementation of a plan for a business registration and licensing system and in the establishment and operation of that system, the One-Stop Licensing Program. State law requires the board include the directors of the Departments of Agriculture, Labor and Industry, Environmental Quality, Livestock, Revenue, Justice, and Public Health and Human Services; a member appointed by the President of the Senate; and a member appointed by the Speaker of the House. If an agency that is not a member of the Board of Review requests inclusion in the streamlined registration and licensing plan as provided in state law, that agency's director must be appointed to the board by the Governor. The Governor must appoint a presiding officer from among the board members.

Section 30-16-302(3), MCA, requires the board to meet at the call of the presiding officer, who is the director of the Department of Revenue, at least once each calendar quarter. The board met twice in each fiscal year 2004-05, 2005-06, and 2006-07 and three times in fiscal year 2007-08. One-Stop Licensing Program personnel told us the meeting dates are established after taking into consideration the board members' schedules and whether current issues warrant a meeting.

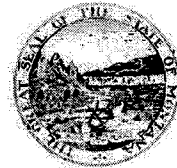
RECOMMENDATION #7

We recommend the department director call meetings of the Board of Review as required by state law.



Dan Bucks
Director

Montana Department of Revenue



Brian Schweitzer
Governor

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November 7, 2008

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LEGISLATIVE AUDIT DIV.

Tori Hunthausen, Legislative Auditor
Legislative Audit Division
Room 160, State Capitol
P.O. Box 201705
Helena, MT 59620-1705

Dear Ms. Hunthausen:

Thank you for the opportunity to respond to the recommendations raised in the Financial-Compliance Audit Report of the Montana Department of Revenue for the fiscal years ended June 30, 2007 and 2008. Our response to the recommendations raised in the report is as follows:

Recommendation #1

We recommend the department accrue liabilities for metal mines license tax allocations to counties in accordance with state law and accounting policy.

Concur. Prior to the change in statute requiring bi-annual payments of the metal mines license tax, rather than annual payment, an accrual of revenues and the related payable to counties at fiscal year-end was not necessary. Although the department has consistently accrued estimated revenues and distributed the metal mines license tax to counties when due, the department concurs with the recommendation that an accrual of this payable should be recorded at fiscal year-end.

The department has since modified its work plan at fiscal year-end to ensure an accrual is recorded, and as the audit report indicates, the department did record this obligation for the fiscal year ended June 30, 2008.

Recommendation #2

We recommend the department properly classify current and prior year revenue activity, liability and fund balance accounts, and fiscal year for budgetary transactions in accordance with state law and accounting policy.

Tori Hunthausen
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Recommendation #5

We recommend the department revise procedures to ensure excess vacation leave is properly calculated and used by employees or forfeited in accordance with state law.

Concur. During the legislative audit a calculation error was found that caused seven employees to accumulate more vacation leave than state law allows. The department relied on information included in the leave accrual reports that was based on pay period ending dates, while the annual leave policy dates are based on the calendar year. These differences lead to misinterpretation of the information. As well, it was determined employee information provided through the Department of Administration's DocuAnalyzer program was inaccurate.

The department has since resolved these differences by adjusting the leave balances of the affected employees to become compliant with state policy. The department has also revised procedures to ensure excess vacation leave is calculated properly by implementing a process to manually verify the leave calculations. The department is working with the Department of Administration to improve the DocuAnalyzer model and to redesign the educational materials provided to agencies. This information is to be presented at the December SABHRS users meeting.

Recommendation #6

We recommend the department report corporation license tax nonfilers and delinquent filers to the Secretary of State as required by state law.

Concur. The department will continue to review and notify the Secretary of State of corporations that have not paid or filed a return as required by law to the best of our ability. As indicated in our response to the prior audit, to effectively meet the requirements of the law, the Secretary of State would need to require a taxpayer identification number; i.e. federal employer identification number or social security number, which they do not currently require. With this information the department can effectively match the Secretary of State information with tax information. The department anticipates requesting legislation that would require taxpayer identification numbers be provided to the Secretary of State.

Recommendation #7

We recommend the department director call meetings of the Board of Review as required by state law.

Concur. Meetings of the One-Stop Board of Review have been called in the past by taking into consideration schedules of the board members and whether current issues warranted a quarterly meeting. This practice did not always cause a meeting to convene each calendar quarter as state statute dictates. The department recognizes